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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/631,810

08/03/2000

Thomas MacKay

P/2167-221

9141

7590

07/15/2005

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New York, NY 10036-2714

EXAMINER

ART UNIT

PAPER NUMBER

DATE MAILED: 07/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Communication Re: Appeal**

Application No.

09/631,810

Examiner

JAGDISH PATEL

Applicant(s)

MACKAY ET AL.

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– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –

1. ☒ The Notice of Appeal filed on 04 November 2004 is not acceptable because:

- (a) ☐ it was not timely filed.
- (b) ☐ the statutory fee for filing the appeal was not submitted. See 37 CFR 41.20(b)(1).
- (c) ☐ the appeal fee received on \_\_\_\_\_ was not timely filed.
- (d) ☐ the submitted fee of \$\_\_\_\_\_ is insufficient. The appeal fee required by 37 CFR 41.20(b)(1) is \$\_\_\_\_\_.
- (e) ☒ the appeal is not in compliance with 37 CFR 41.31(a)(1) in that no claim has been twice rejected.
- (f) ☐ a Notice of Allowability, PTO-37, was mailed by the Office on \_\_\_\_\_.

2. ☐ The appeal brief filed on \_\_\_\_\_ is NOT acceptable for the reason(s) indicated below:

- (a) ☐ the brief and/or brief fee is untimely. See 37 CFR 41.37(a).
- (b) ☐ the statutory fee for filing the brief has not been submitted. See 37 CFR 41.20(b)(2).
- (c) ☐ the submitted brief fee of \$\_\_\_\_\_ is insufficient. The brief fee required by 37 CFR 41.20(b)(2) is \$\_\_\_\_\_.

**The appeal in this application will be dismissed unless corrective action is taken to timely submit the brief and requisite fee. See 37 CFR 41.37(a)(1). Extensions of time may be obtained under 37 CFR 1.136(a). See 37 CFR 41.37(e).**

3. ☐ The appeal in this application is DISMISSED because:

- (a) ☐ the statutory fee for filing the brief as required under 37 CFR 41.20(b)(2) was not timely submitted and the period for obtaining an extension of time to file the brief under 37 CFR 1.136(a) has expired.
- (b) ☐ the brief was not timely filed and the period for obtaining an extension of time to file the brief under 37 CFR 1.136(a) has expired.
- (c) ☐ a Request for Continued Examination (RCE) under 37 CFR 1.114 was filed on \_\_\_\_\_.
- (d) ☐ other: \_\_\_\_\_.

4. ☐ Because of the dismissal of the appeal, this application:

- (a) ☐ is abandoned because there are no allowed claims.
- (b) ☐ is before the examiner for final disposition because it contains allowed claims. Prosecution on the merits remains CLOSED.
- (c) ☐ is before the examiner for consideration.

**DETAILED ACTION**

1. This communication is in response to Appellant's Appeal Brief filed on 11/4/2004.

2. The Appeal Brief filed on 11/4/2004 is defective for the following reasons.

A review of the file indicates that appellant filed an Appeal Brief on September 28, 2004 using the format set forth in 37 CFR 5 1.192(c). However, 37 CFR 5 1.192 was abolished on September 13, 2004, and replaced by 37 CFR 5 41.37(c). Accordingly, the Appeal Brief filed on September 28, 2004 does not comply with 37 CFR 5 41.37(c).

An in-depth review of the Appeal Brief indicates that the following sections are missing from the Appeal Brief filed September 28, 2004:

1) "Summary of claimed subject matter," as set forth in CFR 41.37(c)(1)

2) "Grounds of rejection to be reviewed' on appeal," as set forth in CFR 5 41.37(c)(1)(vi);

3) "Claims appendix," as set forth in 37 CFR 41.37(c)(1)(viii);

4) "Evidence appendix," as set forth in 37 CFR 41.37(c)(1)(ix); and

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5) "Related proceedings appendix," as set forth in 37 CFR 5 41.37(c)(1)(x).

A substitute brief that is in compliance with 5 41.37(c) is required.

3. APPLICANT IS REQUIRED TO SUPPLY THE NECESSARY COPIES WITHIN A TIME LIMIT OF ONE MONTH FROM THE DATE OF THIS LETTER OR WITHIN TWO MONTHS FROM THE DATE OF THE NOTICE OF APPEAL OR WITHIN THE TIME ALLOWED FOR RESPONSE TO THE ACTION APPEALED FROM, WHICHEVER IS THE LONGER, TO AVOID DISMISSAL OF THE APPEAL. NO EXTENSION OF THIS ONE MONTH TIME LIMIT MAY BE GRANTED UNDER EITHER 37 C.F.R. § 1.136(a) OR (b), BUT THE TWO MONTH PERIOD FOR FILING THE BRIEF MAY BE EXTENDED TO A MAXIMUM OF SIX MONTHS.

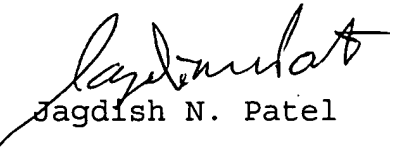
#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAGDISH PATEL whose telephone number is (571) 272-6748. The examiner can normally be reached on 800AM-600PM M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (571)272-6747. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jagdish N. Patel

(Primary Examiner, AU 3624)

07/05/2005